

**SB 317 Testimony of Mark Baker****on behalf of UST Inc.****Montana Senate Taxation Committee****March 3, 2009**

Mr. Chairman, members of the Senate Tax Committee, Senator Kaufmann, good morning. For the record my name is Mark Baker. I am an attorney in Helena and appear this morning on behalf of my client, USTPA, the public affairs division of United States Smokeless Tobacco, an Altria company, which through its subsidiaries manufactures moist smokeless tobacco (MST) products such as Copenhagen and Skoal, along with other brands such as Red Seal and Husky.

UST is opposed to SB 317. SB 317 would increase the tax rate on MST products from \$0.85 per ounce to a staggering \$2.01 per ounce, an increase of 136%. The typical can of MST contains 1.2 ounces of tobacco. As a result, this proposed increase in the rate per ounce would result in the tax on the typical MST can increasing from \$1.02 to \$2.41.

Enacting SB 317 will create a significant disparity in tax rates compared to our neighboring states. Right now, Montana's tax rate on MST products falls right in the middle among our neighboring states of Idaho, Wyoming, North Dakota and South Dakota.

As already mentioned, Montana currently taxes a can of Copenhagen at \$1.02. Two neighboring states tax that same can higher, Idaho at \$1.20 per can and South Dakota at \$1.05 per can. In addition, our two other neighboring states tax that same can of

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Copenhagen at far lower levels. Wyoming's tax is currently \$0.60 per can and North Dakota's tax is \$0.72 per can.<sup>1</sup>

As you can see, SB 317 would increase the tax on a can of Copenhagen to more than twice the rate of Idaho and four times higher than Wyoming, making Montana's rate by far the highest in the region.

Excessive tobacco excise taxes such as those proposed in SB 317 are unfair to adult tobacco consumers and may result in unintended consequences. In addition to placing an unfair burden on adult consumers, SB 317 may promote purchases through untaxed or lower-tax venues, such as Native American reservations and the Internet, where state excise taxes may be avoided or evaded. And, as my previous comments demonstrate, SB 317 would provide an incentive for tobacco purchasers to travel to adjoining states with lower excise tax rates to purchase their tobacco products.

Unintended consequences such as these can lead to both short and long-term fiscal problems for state governments and negatively impact legitimate tobacco retailers and wholesalers. States often receive less revenue than they anticipate from a tobacco tax increase. Fiscal problems are compounded even more when tobacco tax revenues are earmarked for programs with growing costs, such as in the case of SB 317.<sup>2</sup>

A case in point is Washington State. A few years ago, Washington State increased its tax on other tobacco products so significantly, that overall tax revenue actually dropped. The Washington state legislature ultimately repealed the tax increase.<sup>3</sup>

Finally, I would call your attention to the Technical Notes Section in the Fiscal Note. Each one of the four points referenced is an important consideration and question the prudence of moving Montana's tax policy in this direction. Point one states that the federal government has recently passed H.R. 2, which is a \$32.8 billion expansion of the State Children's Health Insurance Program funded by a tobacco tax increase. Point two reinforces the uncertainty with regard to anticipated tax revenues for other tobacco products. Point three emphasizes that additional revenue may be lower than the revenue based on H.R. 2. Point four highlights the uncertainty as to the impact that the federal legislation will have on the state of Montana.

For these reasons and many more, UST respectfully requests that you do not pass SB 317. I would be pleased to answer any questions the committee may have.

Respectfully submitted by,

**Mark Baker**  
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<sup>1</sup> Orzechowski & Walker, *The Tax Burden on Tobacco*, (vol. 43, Feb. 2009), paid for in part by Altria Client Services Inc.

<sup>2</sup> Montana Senate Bill 317 (2009). 26% of the taxes collected are deposited in the state special revenue fund to the credit of the health and Medicaid initiatives account, 32% in an account in the states special revenue fund to be used by the state auditor for the program to assist eligible small employers with the cost of providing health insurance benefits to eligible employees.

<sup>3</sup> Orzechowski and Walker, *Tax Burden on Tobacco*, vol. 43, February 2009 and StateNet Legislative Tracking ([www.statenet.com](http://www.statenet.com)). In 2001, Washington State voters approved Initiative 773, which raised the tax on other tobacco products (OTP) from 74.9% of the wholesale price to 129.4% effective January 2002. In fiscal year 2002, OTP revenues fell by \$1.5 million, or 6%. Effective July 2005, Senate Bill 2097 rolled the OTP tax rate back to 75%.

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